



INTERIOR BOARD OF INDIAN APPEALS

Estate of Ervin Lyle Waits

36 IBIA 46 (02/28/2001)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

ESTATE OF ERVIN LYLE WAITS : Order Docketing Appeal and Affirming
: Decision
:
: Docket No. IBIA 01-67
:
: February 28, 2001

Appellants Lynda Sue Waits-Warren, Edwin L. Waits-Little, Lyle E. Waits, and Wayne A. Waits seek review of an order issued on January 30, 2001, by Attorney Decision Maker Ange Aunko Hamilton. Case No. AB-045-H-01-A. The order determined the heirs of Decedent Ervin Lyle Waits and decreed distribution of the funds in Decedent's Individual Indian Money (IIM) account. For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision.

The Attorney Decision Maker found that Decedent died on May 15, 1995, and that, at the time of his death, the only trust property which he owned was money in an IIM account under the jurisdiction of the Department of the Interior, Office of the Special Trustee. She determined that Decedent's heirs were his wife, Joan O'Hara Waits (Joan); and four children, Appellants here. She concluded that, under the North Dakota laws of intestate succession, Joan was entitled to 1/2 of the funds in Decedent's IIM account as his surviving spouse, while Appellants shared the remaining 1/2 of the funds, receiving 1/8 each.

Appellants challenge the distribution of 1/2 of Decedent's estate to Joan. They question whether Joan was legally married to Decedent. Appellants do not, however, suggest any basis on which to conclude that Joan and Decedent were not married.

The Board has received the record in this matter from the Attorney Decision Maker. The record shows that Decedent's newspaper obituary identified Joan as Decedent's wife. In addition, the family history information provided to the Attorney Decision Maker by the Bureau of Indian Affairs stated that Joan and Decedent were married in 1983. The Notice of Informal Conference issued by the Attorney Decision Maker on December 27, 2000, clearly states that it was sent to Joan as well as to each of the present Appellants. Although the notice states that attendance of family members at the informal conference is normally not required, it further states: "IF THERE IS A DISPUTE, please notify [the Attorney Decision Maker] prior to the meeting but at your earliest opportunity." Appellants were thus on notice that Joan was considered to have an interest in this estate, and that if they questioned this, or any other issue regarding the estate, they needed to notify the Attorney Decision Maker

The record shows that Appellants did not contact the Attorney Decision Maker either in person, by telephone, or in writing in order to challenge Joan's status as an interested party in this estate. Furthermore, none of the Appellants attended the informal conference. Thus, Appellants did not raise any questions about the marital status of Decedent and Joan before the Attorney Decision Maker.

The Board has consistently held that it is not required to consider arguments on appeal that were not raised to the decisionmaker below. Shoshone-Bannock Tribal Credit Program v. Portland Area Director, 35 IBIA 110, 115-16 (2000); Estate of Rufus Ricker, Jr., 29 IBIA 56, 58 (1996); Estate of Glenn Begay, 16 IBIA 115, 118 (1988). The Board finds that Appellants failed to question whether Decedent and Joan were legally married before the Attorney Decision Maker and will not be allowed to raise this issue for the first time on appeal.

Appellants' next contention is based on the pendency of a class action lawsuit challenging the management of IIM accounts in general. See Cobell v. Babbitt, Civil Action No. 96-1285 (D.D.C.). As relief, Appellants request "A full accounting of [Decedent's IIM] account in its entirety from inception," including "any and all financial activity regarding this account." Notice of Appeal at 2.

This contention was, like Appellant's first contention, not raised before the Attorney Decision Maker. Therefore, for the reason stated above, the Board will not consider this contention.

In addition, Appellants' requested relief goes far beyond the scope of this probate proceeding. The Attorney Decision Maker found that Departmental records showed there was a total of \$0.06 in Decedent's IIM account when the estate was submitted for probate. Appellants do not contend that this amount is incorrect. Instead, they request that the Department be required to prove that the amount is correct. In the absence of an assertion that Appellants have some specific information suggesting that the reported amount is incorrect, the Board will not require additional proceedings in the context of this probate to prove the correctness of the amount in Decedent's IIM account.

It is clear that there is no set of circumstances under which Appellants can prevail in this appeal. Accordingly, the Board finds that briefing is not necessary and that a decision may be issued at this time. See, e.g., Estate of Frances Alfred Graham, 34 IBIA 276, 277 (2000), and cases cited therein.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal from the Attorney Decision Maker's January 30, 2001, decision is docketed and that decision is affirmed.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge